

APPLICATION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254 BY A PERSON IN STATE CUSTODY

ORIGINAL

United States District Court	Eastern District of Michigan	
Name: DAVID ANDREW MAPLES	Inmate Number: 237382	Case Number (official use only)
Place of Incarceration: MACOMB CORRECTIONAL FACILITY 24625 26 Mile Rd. New Haven, Michigan 48048-0999		
Name of Petitioner (Include the name under which you were incarcerated) (authorized person having custody over you) DAVID ANDREW MAPLES		Name of Respondent PATRICK J. DUGGAN
The Attorney General of the State of: MICHIGAN		

00-71718

PETITION

MAGISTRATE JUDGE SCHEER

- Name and location of court which entered the judgment of conviction under attack: **16 JUDICIAL CIRCUIT COURT-MACOMB COUNTY, 40 N. Gratiot St, Mt. Clemens, MI 48043**
- Date of judgment of conviction: **September 22, 1995**
- Length of Sentence: **10 To 20 Years - W/Credit for 582 Days**
- Nature of offense involved (all counts): **Delivery 0/50 grams - Less than 225 grams Cocaine - MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(iii) and Count II Conspiracy with respect to count I contrary to MCL 750.157a; MSA 28.35**
- What was your plea? (check one)
 - Not guilty ☐
 - Guilty ☐
 - Nolo contendere ☒

If you entered a guilty plea to one count or indictment, and a not guilty plea to another indictment, give details: _____
- If you pleaded not guilty, what kind of trial did you have? (check one)
 - Jury ☐
 - Judge only ☐
- Did you testify at the trial?

Yes ☐ No ☐

the judgment of conviction?

9. If you did appeal, answer the following:

- (a) Name of court: Michigan Supreme Court
- (b) Result: _____
- (c) Date of result and citation, if known: _____
- (d) Grounds raised: See attached Michigan Supreme Court Brief, Motion on appeal of right.
- (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:
- (1) Name of court: Same as above
- (2) Result: _____
- (3) Date of result and citation, if known: _____
- (4) Grounds raised: See attached motion on appeal of right
- (f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:
- (1) Name of court: _____
- (2) Result: _____
- (3) Date of result and citation, if known: _____
- (4) Grounds raised: _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒

No ☐

11. If your answer to 10 was "yes", give the following information:

- (a) (1) Name of court: Macomb County Circuit Court
- (2) Nature of proceeding: 6.500 motion
- (3) Grounds raised: See attached post conviction relief brief filed in the Michigan Supreme Court
- (4) Did you receive an evidentiary hearing on your petition, application, or motion?
Yes ☐ No ☒
- (b) As to any second petition, application, or motion give the same information:
- (1) Name of court: _____
- (2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application, or motion?
Yes ☐ No ☐

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☒ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application, or motion explain briefly why you did not: _____

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds, and *facts* supporting same. **CAUTION:** In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any of these grounds:

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by the use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

(A) Ground one: **See attached Both Michigan Supreme Court Briefs, From appeal of right and post conviction relief motion.**

Supporting FACTS (tell your story *briefly* without citing cases or law: _____

See attached Briefs

(B) Ground two: _____

Supporting FACTS (tell your story *briefly* without citing cases or law: _____

(C) Ground three: _____

Supporting FACTS (tell your story *briefly* without citing cases or law: _____

(D) Ground four: _____

Supporting FACTS (tell your story *briefly* without citing cases or law: _____

(13) If any of the grounds listed in 12 A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them:

(14) Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following states of the judgment attacked herein:

1. At preliminary hearing: **Daniel P. Feinberg (P-38356)**
3535 Cadillac Tower Bldg., Det, MI 48226

2. At arraignment and plea: **Same as above**

3. At trial: **Same as above**

4. At sentencing: Same as above
5. On appeal: of right, Arthur H. Landau (P-16381)
29777 Telegraph, Ste #2500, Southfield, MI 48034
6. In any post-conviction proceeding: In pro-per
7. On appeal from any adverse ruling in a post-conviction proceeding: In pro-per
16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
Yes ☐ No ☒
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒
1. If yes, give name and location of court which imposed sentence to be served in the future:

2. Give date and length of the above sentence:

3. Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes ☐ No ☒

Wherefore, Movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

In PRO - PER

Signature of Attorney (in any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

3.31.2000
Date

David A. Maple
Signature of Movant

COVER LETTER

11-14-97
(Put Today's Date)

Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: People v David A. Maples (The name you were convicted under goes here.)
Supreme Court No. 110944A (Leave blank - the Clerk will assign a number for you.)
Court of Appeals No. 196975 (Get this number from the Court of Appeals decision.)
Trial Court No. 93-002380 FH (Get this number from Court of Appeals brief or
 Presentence Investigation Report.)

Dear Clerk:

Enclosed please find the original of the pleadings checked below. (Put a check mark by the items you are sending.) I am indigent and can not provide seven copies. Please file them.

- ☒ Affidavit of Indigency/Proof of Service
☒ (Delayed) Pro Per Application for Leave to Appeal
☒ Court of Appeals Decision (You MUST enclose a copy of the Court of Appeals decision.)
☒ Court of Appeals Brief (This is not necessary, but it is a good idea.)
☒ Other Exhibits 1 through 14

Thank you.

Sincerely,

David A. Maples
 (Sign here) David A. Maples # 237382

David Andrew MAPLES
 (Print Name)

237382
 (Prisoner Number)
TRF 2500 S. Sheridan Rd.

Muskegon Hts. MI. 49777
 (Address)
 (City, State, Zip Code)

INSTRUCTIONS

1. You will need 2 copies and the original of this letter and the pleadings listed above.
2. Mail the original of this letter and all the pleadings listed above to the Supreme Court Clerk.
3. Mail one copy of letter and pleadings to the prosecutor in the county where you were convicted.
4. Keep one copy of letter and pleadings for your file.

Copy sent to: Macomb County Prosecutor
 (Fill in the county where you were convicted.)

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v
David A. Maples

(Print the name you were convicted under on this line.)

Defendant-Appellant.

Supreme Court No. _____

(Leave blank.)

Court of Appeals No. 196975
(Get this from the Court of Appeals decision or brief.)Trial Court No. 93-002380 FH
(Get this number from Court of Appeals brief or
Prosecution Investigation Report.)

(DELAYED) PRO PER APPLICATION FOR LEAVE TO APPEAL

INSTRUCTIONS: Answer each question as completely as you can. If you need more space to answer a question, you may attach extra pages. You **MUST** attach a copy of the Court Appeals decision. This application must be **RECEIVED** by the Supreme Court Clerk no later than 56 days from the date stamped on the Court of Appeals decision.

1. I was found guilty on September 22, 1995
(Put date of plea or verdict)

2. The offense(s) was (were): Delivery/Manufacture of Cocaine

3. The proceeding was: (mark one) ☒ a guilty plea; ☐ a no contest (nolo) plea;
☐ a jury trial; ☐ a judge (bench) trial.

4. I was sentenced by the Honorable Raymond R. Cashen of
(Put name of judge here.) 6/20/96
Macomb County Circuit on September 22, 1995. My sentence(s) is (are)
(Put name of court where you were convicted.) (Put the date you were sentenced)

10 Years to 20 Years and _____ to _____
(Minimum sentence) (Maximum sentence) (Minimum sentence) (Maximum sentence)

I am presently in prison at E.C. Brooks in Muskegon, Michigan.
(Name of prison) (City)

5. The Court of Appeals affirmed my conviction on 11/4/97
(Date on Court of Appeals Decision)
in case number 196975. A copy of that decision is attached.
(Number on Court of Appeals decision.)

6. ☒ This application is filed on time — the Supreme Court will **RECEIVE** it within 21 days from the Court of appeals decision.

☐ This application is filed more than 21 days after the Court of Appeals decision because: (Check all the ones which apply to you.)

- ☐ I did not receive my decision from my attorney in time.
☐ I had to write to Prison Legal Services to get help.
☐ I could not get postage and supplies to file this application.
☐ I did not receive my transcripts in time.
☒ I am not experienced or educated in the law.
☐ Other. Explain _____

(DELAYED) PRO PER APPLICATION FOR LEAVE TO APPEAL

David A. Maples

Defendant-Appellant

Court of Appeals No. 19697

GROUND

7. The legal grounds for the relief I want are listed in the issues below which were raised in the Court of Appeals:

XX Yes, I want the Court to consider the issues as they are stated in my Court of Appeals brief. (If you check "Yes" then you must attach a copy of the Court of Appeals brief.) Also attached issues in this package

INSTRUCTIONS: Fill out parts A, B, and C. List each issue. Say why the Court should consider that issue. Answer the questions separately for each issue. Only raise issues that were raised in the Court of Appeals in this section. New issues go in section "8" on page 6.

ISSUE NUMBER 1:

A. (State the issue from your Court of Appeals brief.) Counsel's Argument 1

WAS THE DECISION OF THE COURT CLEARLY ERRONEOUS IN DENYING DEFENDANT'S MOTION TO DISMISS ON THE ISSUE OF ENTRAPMENT, REQUIRING A REVERSAL OF DEFENDANT'S CONVICTION? SEE ATTACHED PAGES 19 THRU 25

B. The Court should consider this issue because: (Check the ones which apply.)

- X 1. the issue involves a substantial question as to the validity of a legislative act.
XX 2. the issue involves legal principles of major significance to the state's jurisprudence.
XX 3. the Court of Appeals decision is clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why. SEE ATTACHED STATEMENT OF FACTS PAGES 1 THRU 18

AND ARGUMENT IN SUPPORT PAGES 19 THRU 25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SEE CASE FILE FOR
ADDITIONAL
DOCUMENTS OR PAGES
THAT WERE NOT
SCANNED